IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8153 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes : YES

2. To be referred to the Reporter or not? No :

3. Whether Their Lordships wish to see the fair copy of the judgement? No : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No : NO

5. Whether it is to be circulated to the Civil Judge? No :

LALPURI J GUSAIN

Versus

STATE OF GUJARAT

Appearance:

MR YS MANKAD for Petitioner

MR RC KODERKAR for Respondents.

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 10/03/2000

ORAL JUDGEMENT

1. This petition is under Article 226 of the Constitution of India. According to the petitioner, the respondents have illegally and in arbitrary manner demolished the cabin, situated in the town Nakhatrana of

Dist. Kuttch. Learned Advocate for the petitioner has taken me through the entire set of facts averred in the petition. It is also submitted that though there was an interim order passed by the competent Civil Court, the cabin occupied by the petitioner was removed and demolished in the drive undertaken by the respondent Panchayat and the officers of the State Government. The documents show that the petitioner was occupying the land and erected the cabin under the authority given by the Panchayat and with the consent of Panchayat, he was enjoying electricity connection and one bill issued by the Gujarat Electricity Board, is produced at page 39 of the petition.

2. Learned Counsel for the petitioner Mr. Mankad has drawn attention of this Court on a decision of this Court in Special Civil Application No. 7720/1988 (Coram : S.K.Keshote,J). Relevant portion of the said judgement reads as under :-

> "It is unfortunate that even such a matter has been taken by the respondents very casually and lightly. Reply has not been filed and as a consequence thereof the Court has to accept whatever averments have been in this Special Civil Application by the petitioner to be correct. However, Mrs. Siddhi Talati, learned counsel appearing for the respondents orally contended that the land was acquired way back in the year 1955 for public purposes. But I do not find anything on record in support of this contention. It is a question of fact, and more so a question of issuance of nitification under sections 4 and 6 of the Land Acquisition Act to be published in the official gazette. But nothing has been produced on record. Be that as it may. The fact is that demolition activity has been started against the petitioner without any notice and without affording an opportunity of hearing. The fact that the petitioner is in possession of the premises since 1964 and carrying on her business of 'Ranjana Lodge' is not in dispute. Even if it is taken that land was acquired in the year 1955, then the impugned action has been taken after more than 33 years and as such it could

> have been done only in accordance with law, which required at least giving full opportunity of hearing, making submissions and establishing her case to the petitioner. In view of this fact, the activity taken out by the respondents cannot be allowed to stand. Action of the respondents in taking of the premises is wholly arbitrary and unjust."

4. Looking to the nature of the prayer advanced vide this petition, the petitioner can be permitted to enjoy the occupation of the cabin at least till the date, he is removed by following due procedure of law. Therefore, I am inclined to clarify that it will be open for the respondents to take appropriate steps,if they are really in necessity of the particular piece of land, to remove the petitioner after following due procedure of law and there shall not be any arbitrary and hasty removal. Rule made absolute. Interim Relief granted earlier is made absolute.

(C.K.Buch,J)

(Vipul)